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1 moot issue. The parties can correct me if that is
2 incorrect. Ordinarily these types of motions are
3 addressed in the Commission's order, and I would
4 recommend to the Commission that it be handled in
5 that manner. The parties will be free to comment
6 on those matters in their opening statements.

7 Are there any preliminary matters that the
8 parties wish to address at this point? Western
9 Wireless.

10 MR. DEJORDY: No. I think the --

11 COMMISSIONER HAGEN: Excuse me one second,
12 Bill. There's some people standing back there. I
13 wonder if you can't find some chairs someplace.

14 MR. BINEK: Commissioner, there is a
15 requirement that the fire marshal limits the number
16 of people that can be in the hearing room, I think
17 the number is 50, so we --

18 COMMISSIONER HAGEN: We're at that.

19 MR. BINEK: I think that we probably have
20 that many people in the room right now, so --

21 COMMISSIONER HAGEN: Okay.

22 MR. BINEK: -- I don't believe that we are
23 allowed to allow anyone else in.

24 COMMISSIONER REINBOLD: Maybe we can take
25 turns.

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1 MR. BINEK: Did you have anything else,
2 Mr. DeJordy?

3 MR. DEJORDY: No. I essentially agree
4 with your assessment as far as the issues that
5 remain. I will address those issues that I believe
6 are before the Commission in my opening statement.

7 MR. BINEK: Mr. Maus.

8 MR. MAUS: We concur, Mr. Binek, that the
9 question of the injunction is moot. We think
10 there's only one issue left before the Commission.
11 That's whether the service provided by Western
12 Wireless in Regent is subject to regulation by the
13 North Dakota State Public Service Commission.

14 MR. BINEK: Thank you. At this time I
15 will allow each of the parties to give an opening
16 statement. Mr. Maus, you can either make an
17 opening statement following Mr. DeJordy or prior to
18 the presentation of your case, whichever you
19 prefer.

20 Mr. DeJordy, do you wish to make an open
21 statement?

22 MR. DEJORDY: Yes, I do.

23 MR. BINEK: I would ask that the opening
24 statements be brief, please.

25 MR. DEJORDY: Okay. I'll try to be

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1 brief. In its complaint filed in this proceeding
2 Western Wireless asked the Commission to address
3 the unlawful anticompetitive and egregious action
4 by Consolidated Telephone Cooperative resulting in
5 the disconnection of interconnection service in
6 direct inward dialing, or DID, numbers previously
7 provided to Western Wireless. This action by
8 Consolidated, only four days following the launch
9 of a new cellular service called wireless
10 residential service, had the effect of stopping the
11 service in its tracks, which was the nation's first
12 competitive local telephone service in rural
13 America.

14 Now Consolidated has and will argue that
15 its self-help actions were justified because in
16 their view Western Wireless was in violation of
17 applicable laws and regulations. Clearly the days
18 of taking the law into your own hands have long
19 gone by, if these days ever did exist. Fortunately
20 for the consumers of Regent, Consolidated saw the
21 error of their ways and restored service to these
22 customers.

23 It is Western Wireless's position that the
24 reinstatement of service by Consolidated resolves
25 the matters raised by Western Wireless in its

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1 complaint and expedited motion for preliminary
2 injunctive relief except whether the Commission
3 should impose fines, penalties or forfeitures on
4 Consolidated for its unlawful actions. Western
5 Wireless strongly believes that such action by the
6 Commission is not only warranted, but required to
7 adequately serve the public interest.

8 In response to Consolidated's answer and
9 counterclaim, I renew Western Wireless's motion to
10 dismiss that counterclaim, and briefly I would like
11 to summarize that motion.

12 MR. BINEK: You may proceed.

13 MR. DEJORDY: Western Wireless
14 respectfully moves that Consolidated's counterclaim
15 be dismissed. First, Western Wireless is
16 authorized to provide telecommunications service,
17 including wireless residential service, over its
18 cellular licenses by the Federal Communications
19 Commission.

20 Second, wireless residential service is
21 exempt under 47 USC Section 332(c)(3)(a) from state
22 entry and rate regulation because, as a cellular
23 service offering, it is classified as a commercial
24 mobile radio service, or CMRS.

25 Lastly, the FCC has conclusively

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1 determined that fixed wireless services offered by
 2 CMRS providers that are ancillary to conventional
 3 mobile service offerings are not subject to state
 4 entry and rate regulation. Furthermore, the FCC
 5 has opened a rulemaking proceeding to address the
 6 regulatory classification of certain fixed wireless
 7 offerings by CMRS or cellular carriers and has
 8 proposed to establish a rebuttable presumption that
 9 fixed service offerings would be regulated as CMRS
 10 offerings, exempt from state entry and rate
 11 regulation.

12 I now would like to address briefly these
 13 points.

14 First, Western Wireless holds all
 15 regulatory authorizations necessary for its
 16 wireless residential service offerings in Regent.
 17 The FCC has issued the necessary licenses for
 18 Western Wireless to provide cellular service
 19 throughout the State of North Dakota, including
 20 Regent. Section 22.901(d) of the FCC's rules
 21 provide, quote, Licensees of cellular systems may
 22 provide fixed services on a co-primary basis with
 23 their mobile offerings, including personal
 24 communications services, end quote.

25 In the order adopting this provision the

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1 FCC stated as follows: We agree with the many
 2 commenters that support the Commission's proposal
 3 to allow CMRS providers to offer fixed wireless
 4 services. One concept of fixed wireless access
 5 includes not only low-power wireless drops from the
 6 street to the home, but also fixed wireless
 7 architectures that would link end users to the
 8 public switched network through cellular switches
 9 and remote base stations in rural areas. Rather
 10 than limit the flexibility of carriers, we prefer
 11 to encourage innovation and experimentation through
 12 a flexible standard. That was the end of the
 13 quote.

14 Significantly, the Commission -- this is
 15 the FCC -- has observed that such regulatory
 16 flexibility is -- would be -- would have
 17 significant public interest benefits by stimulating
 18 competition between wireless and wireline telephony
 19 providers.

20 The second point that I would like to make
 21 is that wireless residential services is exempt
 22 from state entry and rate regulation under Section
 23 332(3)(c)(a) of the Communications Act because it
 24 is a commercial mobile radio service. Wireless
 25 residential service has a mobility component and

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1 its provisions use the same cellular network
 2 infrastructure used to provide conventional
 3 cellular service, including the same switching, the
 4 same interconnection facilities, the same dedicated
 5 trunking, the same cell site equipment, the same
 6 antenna towers, and the same cellular spectrum.

7 The third point that I would like to make
 8 is that the FCC has reaffirmed that the CMRS
 9 classification of fixed services offered by
 10 cellular carriers that are ancillary to the
 11 conventional mobile services offered by the company
 12 are regulated as CMRS.

13 Briefly what the FCC stated in an order
 14 issued on August 1, 1996 -- I'll quote that order,
 15 it's in paragraph 48, it states: "At the outset,
 16 we emphasize that our decision to allow carriers to
 17 offer co-primary fixed services on spectrum
 18 allocated for CMRS does not alter in any way our
 19 regulatory treatment of fixed services that have
 20 been provided by CMRS providers under our prior
 21 rules. In the CMRS Second Report and Order, we
 22 stated that ancillary, auxiliary, and incidental
 23 services offered by CMRS providers fall within the
 24 statutory definition of mobile service, and are
 25 subject to CMRS regulation. We reaffirm that

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1 determination here. In our order today, however,
 2 we have broadened the potential scope of fixed
 3 services that may be offered by CMRS providers. We
 4 therefore seek comment on the regulatory treatment
 5 of such fixed services that may not be considered
 6 ancillary, auxiliary or incidental to mobile
 7 service."

8 Wireless residential service is an
 9 ancillary service offered by Western Wireless to
 10 complement its conventional cellular offerings.
 11 Furthermore, even if wireless residential service
 12 is not considered an ancillary service, the FCC has
 13 initiated a proceeding to consider the regulatory
 14 classification of fixed services offered by CMRS
 15 providers. Specifically, the FCC proposed to
 16 establish a rebuttable presumption that any
 17 wireless service provided under a CMRS provider's
 18 license would be considered to come within the
 19 definition of CMRS and, consequently, regulated as
 20 CMRS.

21 The FCC also sought comment on a proposal
 22 to require that the state commission would have to
 23 petition the Commission under Section 332(c)(3) and
 24 the Commission would have to grant such a petition
 25 before a CMRS provider's fixed wireless service

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1 would be subject to state regulation.
 2 It, therefore, would not be appropriate
 3 for this Commission at this time to address the
 4 very same issue that is now pending before the FCC,
 5 and, therefore, I renew the motion to dismiss
 6 Consolidated's counterclaim at this time.
 7 MR. BINEK: Thank you. Mr. Maus, do you
 8 wish to make an opening statement at this time?
 9 MR. MAUS: We wish to reserve it at this
 10 time.
 11 MR. BINEK: Do you wish to respond to the
 12 motion by Mr. DeJordy, his renewed motion to
 13 dismiss your counterclaim at this time, or do you
 14 also wish to reserve?
 15 MR. MAUS: We also wish to reserve that
 16 response.
 17 MR. BINEK: Okay. Very good. We're ready
 18 to proceed then. Mr. DeJordy, you may call your
 19 first witness.
 20 MR. DEJORDY: Yes. I would like to call
 21 Western Wireless's first and only witness, Kim
 22 Schmidt.
 23 MR. BINEK: I am required to advise you
 24 that it is a Class C felony, punishable by up to a
 25 \$5,000 fine and five years imprisonment, to

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1 knowingly make false statements or to affirm the
 2 truth of a false statement made while under oath.
 3 Being advised of this penalty for perjury, do you
 4 affirm that the testimony you are about to offer
 5 will be the truth?
 6 THE WITNESS: I do.
 7 MR. BINEK: Would you please state your
 8 name for the record?
 9 THE WITNESS: My name is Kim Schmidt.
 10 MR. BINEK: Schmidt. How do you spell
 11 your last name?
 12 THE WITNESS: S-c-h-m-i-d-t.
 13 MR. BINEK: You may proceed.
 14 KIM SCHMIDT,
 15 having been first duly sworn, was examined and
 16 testified as follows:
 17 DIRECT EXAMINATION
 18 BY MR. DEJORDY:
 19 Q. Good morning, Kim. Could you please state
 20 who your employer is and your business address?
 21 A. I am an employee of Western Wireless
 22 Corporation, which is doing business in North
 23 Dakota as Cellular One. My business address and
 24 telephone number is as follows: Western Wireless
 25 Corporation, doing business as Cellular One, 541

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1 South Seventh Street, Bismarck, North Dakota 58504,
 2 701-224-1616.
 3 Q. Kim, what is your position or
 4 responsibility within Western Wireless?
 5 A. I am currently the special projects
 6 manager responsible for overseeing the
 7 implementation of special projects in the state of
 8 North Dakota, including the implementation of
 9 wireless residential services in Regent.
 10 Q. Please state your education, experience
 11 and qualifications.
 12 A. I have a bachelor of science degree in
 13 finance from Moorhead State University. My
 14 relevant work experience over the past three years
 15 includes managing, as well as various projects in
 16 the cellular telephone industry for Western
 17 Wireless Corporation.
 18 Q. What is the purpose of your testimony here
 19 today?
 20 A. The purpose of my testimony is twofold.
 21 First, I will describe the services offered by
 22 Western Wireless in Regent, North Dakota, including
 23 the recently introduced wireless residential
 24 service. And, lastly, I will explain how wireless
 25 residential service is provisioned, including an

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1 identification of the network infrastructure and
 2 customer equipment used to provide this service, as
 3 well as conventional cellular mobile service.
 4 Q. Are you familiar with Western Wireless's
 5 complaint, Consolidated's answer and counterclaim,
 6 and Western Wireless's answers and motion to
 7 dismiss that has been filed in this proceeding?
 8 A. Yes, I am.
 9 Q. When did Western Wireless first contact
 10 Consolidated about obtaining direct interconnection
 11 and DID numbers?
 12 A. Western Wireless contacted Consolidated in
 13 August of 1998 about obtaining direct
 14 interconnection and DID numbers, and such services
 15 were provisioned by Consolidated soon thereafter.
 16 Q. Why does Western Wireless need direct
 17 interconnection and DID numbers from Consolidated?
 18 A. Direct interconnection and DID numbers are
 19 required to provide a local service to the
 20 consumers of Regent. By "local" I mean a service
 21 that allows the consumers of Regent and the
 22 surrounding area to place and receive local calls
 23 between subscribers of landline service and
 24 subscribers of wireless service.
 25 Q. Is direct interconnection and DID numbers

1 needed for conventional cellular services and new
 2 services such as wireless residential service
 3 offered by Western Wireless in the Regent area?
 4 A. Yes.
 5 Q. Did Western Wireless inform Consolidated
 6 that it was going to introduce wireless residential
 7 service in Regent at the time it ordered
 8 interconnection and DID numbers?
 9 A. No, it did not.
 10 Q. And why didn't Western Wireless inform
 11 Consolidated?
 12 A. Western Wireless does not make a
 13 distinction between its conventional cellular
 14 service offering and its wireless residential
 15 service offering. Both are offered over the
 16 company's cellular licenses and cellular network
 17 infrastructure. Consequently, there was no reason
 18 to identify specific cellular service offerings for
 19 the purposes of obtaining interconnection service
 20 and DID numbers.
 21 Q. And when did Western Wireless introduce
 22 this wireless residential service offering in
 23 Regent?
 24 A. Western Wireless introduced its wireless
 25 residential service in Regent on Thursday, January

1 7th of 1999. The launch of wireless residential
 2 service was attended by North Dakota Governor
 3 Schafer, Western Wireless CEO John Stanton, and
 4 several other individuals from government and the
 5 private sector. At the launch Governor Schafer and
 6 John Stanton placed calls, had conversations with
 7 FCC Chairman Kinard and U.S. Senator Byron Dorgan
 8 using the company's wireless residential service.
 9 Q. Following the launch of wireless
 10 residential service on Thursday, January 7th, 1999,
 11 did Western Wireless commence marketing and selling
 12 service to consumers?
 13 A. Yes, we did.
 14 Q. Was wireless residential service fully
 15 operational on January 7th, 1999, using the
 16 interconnection service and DID numbers obtained
 17 from Consolidated?
 18 A. Yes.
 19 Q. What happened on January 11th, 1999, four
 20 days following the launch of wireless residential
 21 service?
 22 A. On Monday morning, January 11th of 1999,
 23 after a customer notified the company that it was
 24 not able to receive any calls, a Western Wireless
 25 technician investigated the matter and determined

1 that the trunk between Consolidated and Western
 2 Wireless was down or not operational. The company
 3 was subsequently informed by letter that
 4 Consolidated unilaterally and without notice
 5 disconnected the interconnection service and DID
 6 numbers.
 7 Q. Was interconnection service and the DID
 8 numbers subsequently restored?
 9 A. Yes. On February 1st of 1999
 10 interconnection service and DID numbers were
 11 restored.
 12 Q. Is Western Wireless currently using the
 13 interconnection service and DID numbers obtained
 14 from Consolidated to provide conventional cellular
 15 service and new services?
 16 A. Yes. Western Wireless is using the
 17 interconnection service and DID numbers obtained
 18 from Consolidated to provide both conventional
 19 cellular service and wireless residential service
 20 in Regent.
 21 Q. In the state of North Dakota how many
 22 conventional cellular service customers and
 23 wireless residential service customers does the
 24 company have?
 25 A. At this time Western Wireless has more

1 than 100,000 conventional cellular service
 2 customers and approximately 45 wireless residential
 3 customers in North Dakota.
 4 Q. Is wireless residential service a stand-
 5 alone service offering or part of the company's
 6 total service -- cellular service offerings in the
 7 state?
 8 A. Wireless residential service is an
 9 incidental service offered by the company to
 10 complement the principal service offered by the
 11 company; that is, conventional cellular mobile
 12 service.
 13 Q. Turning to the matter of how wireless
 14 residential service is provisioned, could you
 15 describe the wireless residential service offering?
 16 A. Yes. Wireless residential service is a
 17 cellular service offering that includes unlimited
 18 local calling for 14.99 per month, with a local
 19 calling area significantly smaller than the local
 20 calling area of other cellular service offerings by
 21 the company, but larger than the local calling area
 22 offered by the incumbent local exchange carrier.
 23 Wireless residential service customers also have
 24 the option of obtaining long distance service and
 25 enhanced calling features for an additional charge.

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1 Q. Please describe the network facilities
 2 used to provide wireless residential service.
 3 A. Wireless residential service is
 4 provisioned over the company's existing cellular
 5 network infrastructure. Wireless residential
 6 service and other cellular service offerings are
 7 provided over the same network switching equipment,
 8 the same interconnection facilities, the same
 9 dedicated trunking facilities, the same cell site,
 10 the same antenna towers, the same cell site radio
 11 equipment and the same cellular spectrum.
 12 Q. Is it your testimony then that the same
 13 network facilities used to provide conventional
 14 cellular service are also used to provide wireless
 15 residential service?
 16 A. Yes.
 17 Q. As for the customer equipment used to
 18 provide wireless residential service to customers,
 19 please identify that equipment.
 20 A. Instead of using a handheld phone, a bag
 21 phone or other equipment typically used by cellular
 22 customers, wireless residential service customers
 23 use a device the size of a small laptop computer
 24 that consists of a standard cellular antenna to
 25 transmit and receive signals in the same manner as

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1 a handheld phone. The device enables customers to
 2 use their existing telephones to place and receive
 3 calls. The device operates using AC power or
 4 battery backup.
 5 Q. Does this equipment operate in a mobile
 6 mode of operation?
 7 A. Yes, it does.
 8 Q. Please describe how wireless residential
 9 service operates in a mobile mode of operation.
 10 A. An important attribute of wireless
 11 residential service is its mobility. Unlike
 12 landline service, and like conventional cellular
 13 service, wireless residential service is a service
 14 associated with a customer, not a specific
 15 location. This feature of wireless residential
 16 service allows a customer to take its phone to a
 17 neighbor's house, to the office, to another
 18 building or out in the field. Because the unit
 19 operates on either AC power or battery backup, it
 20 is mobile.
 21 Q. What is your company's position on whether
 22 wireless residential service is subject to state
 23 entry and rate regulation?
 24 A. My company's position is that wireless
 25 residential service is a cellular service offering

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1 that is classified as a commercial mobile radio
 2 service, or CMRS, which is exempt from state entry
 3 and rate regulation.
 4 Q. Has the company experienced any damages
 5 caused by the disconnection of interconnection
 6 service and DID numbers by Consolidated?
 7 A. Yes. The disconnection of interconnection
 8 service and DID numbers has caused consumers to
 9 question the ability of the company to offer
 10 wireless residential services, which in turn has
 11 had a significant adverse effect on the entire
 12 company.
 13 Q. Does this conclude your testimony here
 14 today?
 15 A. Yes, it does.
 16 MR. DEJORDY: I would tender the witness
 17 for cross-examination.
 18 MR. BINEK: Thank you. Mr. Maus.
 19 CROSS-EXAMINATION
 20 BY MR. MAUS:
 21 Q. Did you bring along a piece of equipment
 22 to show to the Commission, the type that's used in
 23 Regent?
 24 A. No, I did not.
 25 MR. BINEK: Mr. Maus, would you move the

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1 microphone so it picks up your voice better?
 2 MR. MAUS: I don't intend to mark this,
 3 but use it for demonstration purposes.
 4 Q. (MR. MAUS CONTINUING) Would you examine
 5 that and tell us whether that is the equipment
 6 that's being marketed in Regent?
 7 A. Yes, this is the equipment.
 8 Q. And to use that device, as I understand
 9 it, you also have to have the standard landline
 10 telephone that plugs into this device?
 11 A. You do need to have a phone to plug into
 12 this unit, that is correct.
 13 Q. How many customers did Western Wireless
 14 have when the lines were disconnected?
 15 A. Three customers at the time of
 16 disconnection.
 17 Q. How many customers did Western Wireless
 18 have when the lines were reconnected?
 19 A. That number I do not know.
 20 Q. Does the number 32 ring a bell with you?
 21 A. That could very well be. As I said, I do
 22 not know.
 23 Q. Do you have any idea? More than 20? More
 24 than 30?
 25 A. Once again, I'll have to refrain.

1 Q. You heard your counsel say before the
2 hearing today that Western Wireless was, quote,
3 stopped in its tracks when the lines were
4 disconnected. Did you hear that?

5 A. Yes, I did.

6 Q. Isn't it true that your sales increased
7 significantly after the lines were disconnected
8 than before they were reconnected?

9 A. That I do not know. I know that our
10 consumers could not receive any incoming calls.

11 Q. You quoted the price of 14.99 as the price
12 for the service that's offered under the fixed
13 residential wireless service; is that correct?

14 A. Under wireless residential services, that
15 is correct.

16 Q. Is that same price and package offered to
17 other cellular customers?

18 A. Not at this time.

19 Q. So the offering for the fixed residential
20 service is a completely separate offering only
21 available to those customers using this piece of
22 equipment?

23 A. Wireless residential service right now is
24 being offered in the Regent area.

25 Q. To repeat my question, the 14.99 package

1 that phrase mean?

2 A. Residential means anybody residing within
3 the area that we are offering the service.

4 Q. As I understand your testimony, you're
5 stating that the Federal Communications Commission
6 regulates the cellular and mobile telephone
7 industry; is that correct?

8 A. That is correct.

9 Q. Is there anything that prevents the North
10 Dakota Public Service Commission from regulating
11 the aspects of this service which are fixed, to
12 your knowledge?

13 A. To my knowledge, that's up to the
14 attorneys to decide. That's a legal issue.

15 MR. MAUS: I have no other questions.

16 MR. BINEK: Mr. Johnson.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Yes. Miss Schmidt, I guess the question,
20 the North Dakota public convenience and necessity
21 law is found in 49-03.1-01. I don't know whether
22 you're familiar with that or not.

23 A. Probably not.

24 Q. It talks about no public utility shall
25 begin construction or operation of a public utility

1 is available only to those customers who use this
2 piece of fixed residential wireless service in
3 Regent?

4 A. Correct.

5 Q. Would you agree with me that the primary
6 intent of this particular equipment or device is to
7 be used in the home with the home telephone
8 connected to it?

9 A. I would state that it is a mobile unit,
10 that it is not a fixed unit and that it can be
11 taken outside of the home and used.

12 Q. I understand the fixed aspects of the
13 equipment, it has to be plugged into the wall, a
14 telephone has to be plugged into the equipment.
15 Can you describe for me the mobility aspects of the
16 equipment?

17 A. It has a battery backup capability and it
18 can be taken out of the home and used, as well as
19 any of our handheld phones. They also need the AC
20 to charge the batteries.

21 Q. Can you tell me what the initials WRS
22 stand for?

23 A. The initials WRS stand for wireless
24 residential service.

25 Q. And what does the word "residential" in

1 plant or system without first obtaining from the
2 Commission a PC&N. So if I understand correctly
3 from your testimony here, Western Wireless's
4 position is that this residential service, the
5 fixed service that's being provided does not
6 require any new construction by Western Wireless;
7 is that correct?

8 A. In what respect? Excuse me.

9 Q. I'm sorry. Western Wireless is providing
10 the CMRS, the mobile service --

11 A. Correct. Right.

12 Q. -- now? And was doing so before January
13 when it announced the residential service offering
14 in Regent?

15 A. Correct.

16 Q. And to provide the residential service in
17 Regent, it's my understanding that Western Wireless
18 did not have to construct any new facilities other
19 than what was constructed to provide the CMRS
20 service; is that correct?

21 A. Right.

22 Q. And you were in fact then operating a
23 system, namely, the CMRS system, in January, just
24 prior to the initiation of the new residential
25 service?

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1 A. That is correct.
 2 Q. So your position is then that Western
 3 Wireless did not have to either construct nor did
 4 it have to initiate any new operation of a service
 5 in order to provide the residential service?
 6 A. I would agree with that statement.
 7 MR. JOHNSON: I think that's all the
 8 questions I have.
 9 MR. BINEK: Commissioner Hagen.
 10 EXAMINATION
 11 BY COMMISSIONER HAGEN:
 12 Q. Thank you. Just a question. I'm not sure
 13 I caught -- you said you had how many cellular
 14 customers in North Dakota, or was it --
 15 A. An approximate estimate is about 100,000
 16 cellular.
 17 Q. And how many of what we're now calling
 18 fixed wireless?
 19 A. Approximately 45.
 20 Q. 45. So you have more fixed wireless
 21 customers now than you had on -- when service was
 22 restored?
 23 A. Wireless residential customers, yes.
 24 Q. So you have been adding -- you have been
 25 adding to the number you had at that time since

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1 that time?
 2 A. Correct.
 3 COMMISSIONER HAGEN: Thank you. That's
 4 all I have.
 5 MR. BINEK: Commissioner Wefald.
 6 EXAMINATION
 7 BY COMMISSIONER WEFALD:
 8 Q. I have several questions. I'm interested
 9 in getting some information on the record about --
 10 about your fixed wireless service, and I'm
 11 interested in finding out whether this fixed
 12 service is part of a larger package which includes
 13 mobile services or if it's offered alone.
 14 A. Currently we're offering this unit as both
 15 the mobile and the wireless residential service.
 16 It has both capabilities. You can take this unit,
 17 as I had stated, and take it to another location
 18 and call from it, as well.
 19 Q. And what about -- I think my question,
 20 what I was trying to say, is it offered in
 21 conjunction with your mobile radio services that
 22 you traditionally called CMRS, or is it separately
 23 -- or is it offered separately?
 24 A. It's offered separately, so they could
 25 purchase both cellular and have this, as well.

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1 Q. They can purchase -- is there a package or
 2 is one -- one is offered --
 3 A. At this point in time they are separate
 4 entities.
 5 Q. They are separate entities so they would
 6 purchase one fixed for -- what was your price
 7 again?
 8 A. 14.99.
 9 Q. -- 14.99, and that includes a certain
 10 number of options, and then if they wish to
 11 purchase your CMRS, can they get that as an add-on,
 12 or is that priced as a separate package, as well?
 13 A. You're talking cellular?
 14 Q. The cellular.
 15 A. Yes, separate.
 16 Q. Separate. Okay. I'm also interested in
 17 the size of the service area over which the fixed
 18 wireless service is provided.
 19 A. At this point in time we are offering
 20 local to about 16 other communities other than
 21 Regent, including Dickinson -- Dickinson, Bentley.
 22 I don't have them all listed with me, but it is
 23 about a 50-mile radius.
 24 Q. Okay. All right. How much mobile versus
 25 fixed traffic is taking place over your wireless

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1 system in the Regent area?
 2 A. That I don't have any numbers for you on.
 3 Q. Are those numbers available from someone
 4 else if we ask to have them filed as a late-filed
 5 exhibit?
 6 A. I guess that would have to be a question
 7 that legal counsel would have to answer.
 8 MR. DEJORDY: Yes, we can file a
 9 late-filed exhibit addressing that.
 10 COMMISSIONER WEFALD: Thank you.
 11 MR. BINEK: Mr. DeJordy, would you please
 12 file that as late-filed Exhibit WWC-1.
 13 MR. DEJORDY: Yes, I will.
 14 Q. (COMMISSIONER WEFALD CONTINUING) Is the
 15 fixed service offered over a discrete block of
 16 spectrum separate from the spectrum used for mobile
 17 services?
 18 A. No. How do you mean?
 19 Q. Well, I understand that there's different
 20 spectrums --
 21 A. Right.
 22 Q. -- that can be used. And I don't know
 23 enough about this to be --
 24 A. Right.
 25 Q. -- specific. I'm sorry.

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1 A. That I guess I don't have an answer for
 2 you on.
 3 Q. So is fixed service, whether -- is your
 4 fixed service offered over a discrete block of
 5 spectrum that's separate from the spectrum used for
 6 mobile services?
 7 A. No. It would be one and the same.
 8 Q. It's the same?
 9 A. Right.
 10 Q. Okay. So you do have an answer?
 11 A. Right. It would be one and the same.
 12 Q. All right. Can you describe to me the
 13 degree to which your fixed and mobile services are
 14 integrated?
 15 A. That I also can't answer for you.
 16 Q. Is it -- maybe I can be more specific.
 17 You had to build a tower in the area?
 18 A. Correct.
 19 Q. And is that tower used for both fixed and
 20 mobile services?
 21 A. Yes, it is.
 22 Q. It is?
 23 A. Mm-hmm.
 24 Q. And so are they integrated in any other
 25 way than using the same tower?

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1 A. No. They both just use the same tower.
 2 It's the same infrastructure. They both work off
 3 of the same infrastructure.
 4 Q. All right. And then are there other
 5 towers in the -- you mentioned that there's a
 6 number of towns that people can call.
 7 A. Mm-hmm.
 8 Q. And all the way to Dickinson. Are the --
 9 are there other towers that are used in that area
 10 that help to -- that help to move the --
 11 A. There are towers in the Dickinson area.
 12 Q. There are towers in the Dickinson area.
 13 A. Mm-hmm.
 14 Q. And are they used then for both the fixed
 15 and the mobile service?
 16 A. Right. Yes.
 17 Q. They are?
 18 A. Yeah.
 19 Q. Okay. Are there any other ways that you
 20 can think of besides the towers that these services
 21 are integrated?
 22 A. No.
 23 Q. All right. When you market the service,
 24 do you sell it to people as a fixed service or a
 25 mobile and a fixed service?

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1 A. The most attractive thing about wireless
 2 residential, it is really the consumer's choice how
 3 they would like to use this service because it has
 4 both capabilities, so it's however they would like
 5 to use this service.
 6 Q. So they can use it either as a fixed or a
 7 mobile service by taking it to other locations?
 8 A. Correct.
 9 Q. All right. And can you describe to me
 10 again how you market this? Tell me what you share
 11 with customers in order to entice them to try it.
 12 A. Right now we've just been going into the
 13 Regent community and telling them about our
 14 service. I mean, I really believe that it sells
 15 itself. It's got a competitive rate and it's just
 16 simply offering the consumers a choice, you know,
 17 so I guess that's primarily what we're doing, is
 18 just pointing out some of the features, the fixed
 19 long distance rate of 10 cents a minute, so some of
 20 those points are -- pretty much sell themselves.
 21 COMMISSIONER WEFALD: Mm-hmm. Okay. All
 22 right. Thank you.
 23 MR. BINEK: Commissioner Reinbold.
 24 COMMISSIONER REINBOLD: Thank you, Mr.
 25 Examiner.

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1 EXAMINATION
 2 BY COMMISSIONER REINBOLD:
 3 Q. Miss Schmidt, besides being the hometown
 4 of Senator Krauter, why Regent? Why?
 5 A. It's also the hometown of Senator Byron
 6 Dorgan.
 7 Q. Why Regent besides these two characters --
 8 or these two personalities?
 9 A. That was a decision made by our upper
 10 echelon management team. It was a decision made by
 11 our CEO, John Stanton. They had had several
 12 discussions about approaching Regent, so that is
 13 something that they had decided.
 14 Q. It could have been Almont?
 15 A. It could have been Almont. I do not
 16 know. But Regent was chosen and that is where we
 17 focused our attentions.
 18 Q. It's something to put them on the map.
 19 A. Okay. We'll keep that in mind.
 20 Q. You said when the service was restored,
 21 there were only three customers on it. Did you say
 22 three?
 23 A. When service was turned off --
 24 Q. Yes.
 25 A. -- we had three customers at that time.

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1 Q. And you indicated I think in your
2 testimony --
3 A. Excuse me. Three wireless residential
4 customers at that time.
5 Q. Yes. I believe you indicated that some
6 people didn't know -- didn't understand what
7 happened. Do they understand exactly what happened
8 now?
9 A. Yes, they do understand what happened now.
10 Q. And are all your customers within the city
11 limits and the boundaries of metropolitan Regent?
12 A. Yes, they are. They're within the
13 coverage area, yes.
14 Q. Within what?
15 A. Within the coverage area, yes. So pretty
16 much the Regent area.
17 Q. You extend outside of the city; is that
18 right?
19 A. Right now we're focused on Regent, but
20 when you say "outside," we have some farmers that
21 live seven miles out that do have our service.
22 Q. The boundaries of the city -- the
23 corporate boundaries, they don't dictate where --
24 that that's a limit; is that right?
25 A. Right.

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1 Q. And your customers can reach you on this
2 service as far as Dickinson; is that correct?
3 A. That is correct.
4 Q. How many miles?
5 A. As a local call. That would be a local
6 call.
7 Q. How many miles is that?
8 A. 52 miles, I believe.
9 COMMISSIONER REINBOLD: That's all the
10 questions I have of this witness at this time.
11 MR. BINEK: Commissioner Hagen indicated
12 he has another question.
13 FURTHER EXAMINATION
14 BY COMMISSIONER HAGEN:
15 Q. Just a couple more. In simple words, what
16 would you call the set in front of you?
17 A. This is a telular unit. That's what we
18 call it.
19 Q. Just called a cellular unit?
20 A. Telular. Telular.
21 Q. Telular. Okay.
22 A. T-e-l-u-l-a-r is the spelling on it.
23 Q. Got it. Tell me, can the fixed wireless
24 service that you provide -- what can it carry,
25 voice, picture, data? Can it carry all three?

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1 A. It can carry phone fax, it can do computer
2 data, as well. We do have some people using their
3 computers.
4 Q. So you could hook up a computer to it?
5 A. Correct.
6 Q. What is your -- what is the intention of
7 Western Wireless assuming everything went forward
8 and it's clear? What is your intention in terms of
9 providing service in North Dakota? Regent now,
10 Bismarck tomorrow, Grand Forks the next day?
11 A. The sky is the limit, I guess. I don't
12 have any scope on that as for now.
13 Q. You don't know if they have plans to
14 provide service in the larger cities, as well as in
15 the rural areas?
16 A. It could be a possibility. I won't deny
17 that that's not a possible avenue that they may
18 consider, but --
19 Q. What is your cellular coverage in North
20 Dakota? Isn't it about 98 percent, almost a
21 hundred percent?
22 A. I believe that's a fair assessment.
23 Q. So potentially if you -- and if I remember
24 correctly from the other hearing that's still
25 pending, I think the testimony in that was that the

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1 other 2 percent was going to be covered soon.
2 A. Right.
3 Q. So if your company decided and everything
4 was clear, you could be providing this kind of
5 service, fixed wireless, in all of North Dakota
6 sometime?
7 A. Right.
8 COMMISSIONER HAGEN: Thank you. That's
9 all I have.
10 MR. BINEK: Thank you. Mr. DeJordy, do
11 you have any redirect?
12 MR. DEJORDY: Just a couple questions.
13 REDIRECT EXAMINATION
14 BY MR. DEJORDY:
15 Q. First, does Western Wireless consider
16 wireless residential service to be a cellular
17 service offering?
18 A. Yes.
19 Q. Are you aware of any wireless residential
20 service customers of Western Wireless that have
21 terminated service from Consolidated?
22 A. Not to my knowledge, no.
23 Q. So the wireless residential service
24 customers that Western Wireless have also have
25 Consolidated's telephone service, as well?

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1 A. That is correct.
 2 Q. You testified with respect to the network
 3 infrastructure used to provide wireless residential
 4 service and I believe you testified to the fact
 5 that the same network infrastructure was used to
 6 provide wireless residential service as
 7 conventional cellular service; is that correct?
 8 A. That is correct.
 9 Q. When you say the "same network
 10 infrastructure," do you mean the same network
 11 switching?
 12 A. Yes, that's correct.
 13 Q. Does that also mean the same
 14 interconnection facilities?
 15 A. That is also correct.
 16 Q. The same dedicated trunking facilities, as
 17 well?
 18 A. Yes.
 19 Q. The same cell sites?
 20 A. Yes.
 21 Q. The same antenna towers?
 22 A. Yes.
 23 Q. The same cell site radio equipment?
 24 A. Yes.
 25 Q. The same cellular spectrum?

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1 A. Yes.
 2 Q. So is the only difference in terms of
 3 network equipment used to provide wireless
 4 residential service and cellular -- conventional
 5 cellular service the customer premise equipment
 6 that's used?
 7 A. That is correct.
 8 MR. DEJORDY: I have no further
 9 questions.
 10 MR. BINEK: Mr. DeJordy, would you -- I'm
 11 going to refer you to the late-filed exhibit.
 12 Would you describe briefly what it is you're going
 13 to be providing?
 14 MR. DEJORDY: I believe Commissioner
 15 Wefald asked a question of the traffic that is
 16 carried --
 17 COMMISSIONER WEFALD: The amount of mobile
 18 versus fixed traffic over the wireless system.
 19 MR. DEJORDY: Over the wireless system in
 20 the state of North Dakota?
 21 COMMISSIONER WEFALD: In that area.
 22 MR. DEJORDY: In that area. Okay. So
 23 what we'll file is an exhibit showing the traffic
 24 that is carried by Western Wireless in that area
 25 showing the wireless residential service traffic

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1 and the conventional cellular mobile service
 2 traffic in the combined -- combination involved.
 3 COMMISSIONER WEFALD: And I would think in
 4 that area I would mean the -- in the Regent -- in
 5 the Regent exchange. Or how will that work? Maybe
 6 it's got to be the area that you offer the service
 7 within Regent, in that area that the -- that the --
 8 in your calling area.
 9 MR. DEJORDY: Calling area. That's what I
 10 was thinking of that what we would do it, is within
 11 the calling area that wireless residential service
 12 is provisioned, which includes approximately, I
 13 believe, ten different communities. Okay.
 14 MR. BINEK: Thank you. Mr. Maus, I'll
 15 allow you to question regarding Mr. DeJordy's
 16 questions and any other answers that were provided
 17 in questioning by Mr. Johnson and the
 18 Commissioners.
 19 COMMISSIONER HAGEN: If anybody gets too
 20 hot, why don't you take off your coats -- it's kind
 21 of hot -- if you want to.
 22 RECROSS-EXAMINATION
 23 BY MR. MAUS:
 24 Q. I want to clarify. As I understand it,
 25 there's 16 communities that they can call from

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1 Regent for this 14.99; is that correct?
 2 A. That's a rough estimate, yes.
 3 Q. Approximately a 50-mile radius?
 4 A. Correct.
 5 Q. But that doesn't mean that somebody 50
 6 miles away can buy this service from you; am I
 7 understanding that correctly?
 8 A. It would work. It would work.
 9 Q. Someone in Dickinson could buy this
 10 device?
 11 A. If our company decided to sell them that
 12 service, yes.
 13 Q. What is the area right now within which
 14 you are selling or have devices sold?
 15 A. We are primarily focusing on the Regent
 16 community at this point in time.
 17 Q. Do you know if you have any customers in
 18 the Mott exchange, which is about seven miles east
 19 of Regent?
 20 A. That I do not know.
 21 Q. Who actually owns this box? Is it the
 22 customer or is it Western Wireless?
 23 A. We are letting them -- lend this equipment
 24 at no charge.
 25 Q. So your answer is Western Wireless retains

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1 ownership of the box?
 2 A. That is correct.
 3 Q. Can you tell me how this service differs
 4 at all, if it does, from traditional landline
 5 service that's in the home?
 6 A. This wireless residential service offers
 7 the mobility capability that our current incumbent
 8 does not offer, as well as numerous services,
 9 extended local calling area, reduced long distance,
 10 those type of features, as well.
 11 Q. I guess to rephrase my question, you can
 12 obtain or receive all of the services on this
 13 device that you could over your traditional
 14 landline telephone; is that correct?
 15 A. This offers a mobility capability that, to
 16 my understanding, the incumbent does not offer, so
 17 in essence, no. This would offer, like I said, the
 18 mobility factor that just isn't there with the
 19 incumbent.
 20 Q. Let me rephrase the question again. Is
 21 there anything a landline can do that this phone
 22 device does not do?
 23 A. Once again, I'll have to state I don't
 24 believe that the landline phone is mobile.
 25 Q. Well, I'll have to be more specific. Can

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1 you -- you can use this thing with computers, as I
 2 understand?
 3 A. That is correct.
 4 Q. And you can use it with the Internet?
 5 A. That is correct.
 6 Q. You can use it for long distance calls or
 7 local calls?
 8 A. Correct.
 9 Q. In other words, it provides all of those
 10 same services that the landline provides?
 11 A. Those same services, yes.
 12 Q. How does the area -- calling area of this
 13 device compare to the calling area for your
 14 cellular service in Regent?
 15 A. Comparing cellular to wireless
 16 residential?
 17 Q. Yes.
 18 A. It would be one and the same as far as
 19 where they can call.
 20 Q. For the same price?
 21 A. Different prices.
 22 Q. For your cellular service, what is the
 23 local calling area or the area where they call
 24 without paying any long distance charges?
 25 A. Right now in cellular for the packages

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1 that we offer, it is the state of North Dakota in
 2 most of the packages that we offer.
 3 Q. And the fixed residential service is just
 4 this 50-mile area that we've described before?
 5 A. The wireless residential service, yes.
 6 Q. Do you know whether this device involves
 7 any handoff between cell sites?
 8 A. That I cannot answer.
 9 Q. Now, you've testified that, to the best of
 10 your knowledge, none of the customers have
 11 disconnected their landline. Did I understand that
 12 correctly?
 13 A. To my knowledge, that is a correct
 14 statement.
 15 Q. Isn't it true that the most use that's
 16 made of this device is to use it to call Dickinson
 17 or Regent so you don't have to pay long distance,
 18 but to use your landline for all other calls that
 19 are local or long distance?
 20 A. That I don't believe is so.
 21 Q. And why don't you believe that is so?
 22 A. Because I believe that they're making all
 23 kinds of calls on these units, but we have no way
 24 of monitoring that at this time.
 25 MR. MAUS: I have no other questions.

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1 MR. BINEK: Mr. Johnson.
 2 RE-CROSS-EXAMINATION
 3 BY MR. JOHNSON:
 4 Q. Miss Schmidt, again, as I understand it,
 5 this unit can be mobile, but what would be required
 6 is the attachment of a handset through a wire to
 7 this unit; is that correct?
 8 A. That is correct.
 9 Q. And then you would have to take the
 10 handset and this unit and a battery operating this
 11 unit into your car with you if you wanted to make a
 12 call in your car from this unit; is that correct?
 13 A. That is correct.
 14 Q. It's a little more cumbersome than taking
 15 a nice, small cellular unit; is that correct?
 16 A. Yes, that may be true.
 17 Q. And one other question. You have kind of
 18 delicately avoided this subject. If the Commission
 19 finds that Consolidated did in fact violate a rule
 20 or a law here in North Dakota, it would then have
 21 to decide whether or not sanctions were
 22 appropriate, and the question I would have to you,
 23 and you haven't answered it yet, is, does Western
 24 Wireless have any recommendation or any thoughts as
 25 to what would be an appropriate sanction given this

1 set of facts and circumstances of this case?

2 A. That, I believe, is out of my realm, as
3 well. I believe that's up to the attorneys and
4 more of a legal issue than what I can cover.

5 MR. JOHNSON: That's all the questions I
6 have.

7 MR. BINEK: Commissioner Hagen?

8 COMMISSIONER HAGEN: No questions.

9 MR. BINEK: Commissioner Wefald?

10 COMMISSIONER WEFALD: I have no further
11 questions at this time.

12 MR. BINEK: Okay. The witness is
13 excused. Mr. DeJordy, I believe you indicated that
14 this was your only witness.

15 MR. DEJORDY: Yes. At this point Western
16 Wireless doesn't have any other witnesses to
17 present and would turn the matter over to
18 Consolidated.

19 MR. BINEK: So you rest at this point?

20 MR. DEJORDY: That's correct.

21 (Discussion had off the record.)

22 MR. BINEK: We're ready to go back on the
23 record. Mr. Maus, you may proceed.

24 MR. MAUS: Mr. Binek, Mr. Sebby is going
25 to make the opening statement on behalf of

1 Consolidated.

2 MR. BINEK: We're back on the record.
3 Could we have it quiet, please. Thank you. Mr.
4 Sebby, you may proceed.

5 MR. SEBBY: Good morning. It seems that
6 there's a lot of ways to characterize this hearing
7 here today, and one description that has occurred
8 to me is it's sort of like a playground fight
9 except the playground is a serious one. One kid
10 throws a rock, the second kid throws a rock back,
11 the first kid hollers, you threw a rock at me,
12 help, help.

13 Western Wireless has asserted in this case
14 that Consolidated has ignored and violated the law
15 and it ought to be punished, and the response is,
16 you, too, or you first or something of the sort in
17 the playground variety of response. But
18 Consolidated does assert very seriously that the
19 violation that is of real import here is Western
20 Wireless self-help, its venture into offering
21 service in a regulated industry without applying to
22 the Commission for the appropriate regulatory
23 authority.

24 And we have heard this morning Mr.
25 DeJordy's explanation on behalf of his company,

1 Western Wireless, that it does not believe that it
2 is required under applicable federal law to conform
3 to any State of North Dakota regulatory
4 requirements for it to offer fixed wireless
5 service. And in the argument they refer to a
6 section of the federal law, Section 332 of the
7 Communications Act of 1934, and they also refer to
8 action of the FCC in 1996, the so-called
9 flexibility order.

10 We are dealing here with a situation that
11 has been described many times, as the Commissioners
12 are well aware, as the dual system of regulation of
13 telecommunications in the United States. The dual
14 factors are the federal government and the several
15 state governments. And it may be a play on words,
16 but sometimes the word "dual" is spelled d-u-e-l
17 because states have dueled with the Federal
18 Communications Commission many times about
19 retention and exercise of states' authority despite
20 Federal Communications Commission's assertions of a
21 prior or preeminent or preemptory authority.

22 Regarding the matter presently before the
23 Commission, it is very clear that mobile radio
24 telephone service is subject to the jurisdiction of
25 the Federal Communications Commission only, and

1 under Section 332 of the Communications Act of
2 1934, no state may regulate the entry of or rates
3 charged by any provider of mobile radio
4 telecommunications service. All mobile service is
5 wireless, but it is not true. It is not true. It
6 is not true that all wireless service is mobile.
7 Some wireless service is fixed. And fixed wireless
8 service is subject to entry regulations by this
9 state and by all of the other states.

10 The Federal Communications Commission has
11 thought about, it has read about, it has read
12 Western Wireless's briefs about claims, arguments,
13 assertions, suggestions, that the FCC should waive
14 its wand and declare that all mobile service also
15 includes fixed service, but the FCC has not done
16 so. The order that Mr. DeJordy cited before should
17 be very carefully referred to by the Commission.

18 The FCC made it clear that holders of
19 mobile licenses are not restricted as a matter of
20 federal law from using their mobile radio licenses
21 for fixed service, but the FCC did not declare that
22 states held jurisdiction over the offering of fixed
23 service within the borders of the several states.

24 That matter remains open. It is not decided.

25 Now, what Mr. DeJordy and Western Wireless

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1 suggest to you is that you should simply surrender
2 this state's authority over fixed wireless
3 telecommunications service. The FCC has not tried
4 to wrest it away from you. Western Wireless wants
5 you to simply give it away.

6 And the position of Consolidated Telephone
7 Company is a very simple one, it's a concept
8 frequently heard in these days of changing
9 regulatory law, competitive neutrality, the same
10 rules that apply to wireline companies should apply
11 to wireless companies. If they're going to provide
12 fixed residential service to fixed locations, they
13 should come to this Commission and get a
14 certificate of public convenience and necessity.
15 That's what this case is about.

16 MR. BINEK: Thank you. Mr. Maus or Mr.
17 Sebby, you may proceed and call --

18 MR. DEJORDY: Excuse me. Could I just --
19 I don't know if that was -- was that an opening
20 statement?

21 MR. BINEK: I assume that was an opening
22 statement.

23 MR. DEJORDY: Okay.

24 MR. BINEK: Mr. Maus.

25 MR. MAUS: Consolidated would call Douglas

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1 Meredith to the stand.

2 (Discussion had off the record.)

3 MR. BINEK: Let's take a ten-minute
4 break.

5 (Recess taken.)

6 MR. BINEK: We're on the record. I
7 believe you had called your first witness, Mr.
8 Maus. Would you be seated. I'm required to inform
9 you that it is a Class C felony, punishable by up
10 to a \$5,000 fine and five years imprisonment, to
11 knowingly make false statements or to affirm the
12 truth of a false statement made while under oath.
13 Being advised of this penalty for perjury, do you
14 affirm that the testimony you're about to offer
15 will be the truth?

16 THE WITNESS: Yes.

17 MR. BINEK: Would you state your name for
18 the record, please?

19 THE WITNESS: My name is Douglas Meredith.

20 MR. BINEK: And would you please spell
21 your last name?

22 THE WITNESS: M-e-r-e-d-i-t-h.

23 MR. BINEK: Thank you. You may proceed,
24 Mr. Maus.

25

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1 DOUGLAS MEREDITH,
2 having been first duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAUS:

6 Q. Would you tell us what your occupation is
7 and your place of business?

8 A. Yes. My name is, as I said, Douglas
9 Meredith. I'm employed by John Staurulakis,
10 Incorporated. JSI is a telecommunications
11 consulting firm headquartered in Seabrook,
12 Maryland. At JSI, I am the director of the
13 Economics and Pricing Division, and as such I'm
14 responsible for the development of policy regarding
15 economics and pricing for clients. I have been
16 employed at JSI since 1995. Prior to my work at
17 JSI I was an independent research economist in
18 Washington, D.C.

19 In my employment at JSI I have developed
20 policy and have participated in numerous
21 proceedings for rural and nonrural telephone
22 companies. These activities have included
23 developing policy related to the application of the
24 rural safeguards for qualified local exchange
25 carriers, the determination of eligible

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1 telecommunications carriers, and the sustainability
2 and application of universal service policy for
3 telecommunications carriers.

4 I am a member of the national Rural Policy
5 Research Institute, RUPRI, telecommunications
6 panel. In my capacity with RUPRI I assist in
7 developing policy recommendations for advancing
8 universal service and telecommunication
9 capabilities in rural communities. I have a
10 master's degree in economics from the University of
11 Maryland - College Park. And I am an adjunct
12 professor of economics at Hood College in
13 Frederick, Maryland.

14 Q. On whose behalf are you testifying in
15 these proceedings?

16 A. I'm testifying on behalf of Consolidated
17 Telephone Cooperative. CTC is headquartered in
18 Dickinson, North Dakota.

19 Q. And what is the purpose of your testimony
20 in these proceedings?

21 A. The purpose of my testimony today is to
22 show the history of the Federal Communications
23 Commission processes regarding the regulatory
24 status of fixed wireless service. Ultimately my
25 testimony provides the foundation for this

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1 Commission to determine that Western Wireless
2 should apply for a certificate of public
3 convenience and necessity for local exchange
4 services before offering fixed wireless service in
5 North Dakota.

6 Q. Please summarize your testimony.

7 A. The Western Wireless offering of a
8 telecommunications service using cellular
9 frequencies to interconnect fixed residential and
10 possibly business locations to the public network
11 is subject to the requirements of North Dakota law
12 that a certificate of public convenience and
13 necessity be first obtained. This fixed service is
14 not mobile service that is governed by Section 332
15 of the Federal Communications Act or any other
16 provision of federal law or FCC rules or orders.

17 The requirements of North Dakota law are
18 based on sound public policy which recognizes the
19 public interest and requires that the state
20 commission have the opportunity to determine the
21 fitness and the ability to provide the proposed
22 service, the adequacy of the proposed service, the
23 technical and financial and managerial ability to
24 provide the proposed service. This investigation
25 is a necessary safeguard before subscribers commit

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1 their vital business and personal interests to a
2 telecommunications provider. The state commission
3 must exercise this authority consistent with the
4 Communications Act of 1934 as amended. This
5 requirement by no means suggests that the
6 certificate process be a means of preventing entry,
7 but rather necessary to ensure that the proper
8 procedures are followed. In order to offer a
9 competitive replacement of wireline loops with a
10 fixed wireless service, Western Wireless should
11 comply with the public -- the state public
12 convenience and necessity process.

13 Q. What interest does Consolidated Telephone
14 have in this proceeding?

15 A. As we've heard, Western Wireless began --
16 began offering a fixed wireless service in Regent,
17 North Dakota, on January 7, 1999. According to
18 press reports of the event, Western Wireless's
19 debut in Regent represents "ground zero in a bigger
20 campaign to break into rural markets." Regent is a
21 small community of less than a hundred households.
22 Western Wireless is using its mobile service
23 physical interconnection with CTC to provide
24 competitive local exchange service using radio
25 loops to fixed locations.

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1 Q. Is Western Wireless's fixed wireless
2 service a mobile service?

3 A. No, it is not. The service considered in
4 this proceeding, and offered by Western Wireless,
5 is a fixed wireless service using a portion of
6 Western Wireless's CMRS, commercial mobile radio
7 spectrum. Western Wireless's service uses radio
8 loops as a replacement for wire loops in providing
9 basic local exchange service. Western Wireless
10 claims that this service, quote, provides consumers
11 in Regent with a competitive alternative to local
12 exchange service offered by CTC, end quote.
13 Furthermore, Western Wireless states that, quote,
14 customers plug their existing wireline telephone
15 handset into a laptop-sized mobile wireless unit
16 provided by Western Wireless, which enables
17 customers to use their wireline telephone handsets
18 to place and receive calls. This service is
19 designed to provide consumers with an alternative
20 source for their local telephone needs, end quote.

21 Western Wireless claims that this service
22 is a, quote, hybrid fixed/mobile service. However,
23 this fixed wireless service is designed to allow
24 for the use of existing telephones and other
25 household devices. The so-called, quote, hybrid

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1 nature of the service, if this is an accurate
2 description, is the radio loop as a replacement of
3 the wireline loop connecting existing telephones to
4 the public switched network. As shown in the
5 exhibit, as referred to as the box -- I'll refer to
6 it as the box, the intended use of a Western
7 Wireless box is to tie existing phones to the
8 public network via a radio loop.

9 In the pending universal service case
10 Western Wireless's witness testified that, quote,
11 We obviously would love to be granted authority,
12 but I think we will do a test anyway of the service
13 offering, end quote. It appears that offering
14 fixed wireless service in Regent is part of the
15 Western Wireless test. The Western Wireless
16 witness testified, as well, that the AT&T project,
17 Angel, quote, is actually similar to what we would
18 be able to provide. And further, quote,
19 essentially what AT&T is looking to do is to
20 provide fixed service. They're talking about
21 pizza-size dishes on the side of the house, end
22 quote. Moreover, in Antelope Valley, Nevada, radio
23 coverage from Western Wireless's CMRS spectrum is
24 used and, quote, this is the fixed service, the box
25 that I was talking about where they have telephones

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1 within their homes that are tied to this radio
 2 service, end quote.
 3 The description of Western Wireless in the
 4 universal service case identified a substitution of
 5 wire loop with radio loop, and that was confirmed
 6 today. It also shows that the Western Wireless
 7 existing deployment in Nevada ties telephone to a
 8 receiver/transmitter box. This is what is deployed
 9 in Regent: A pizza-sized, laptop-sized receiver/
 10 transmitter box that receives power from the
 11 residence and then ties the telephone in the home
 12 to the radio loop. Western wireless would like to
 13 call a receiver/transmitter box with a supplied
 14 power cord of six feet a hybrid fixed/mobile
 15 service, but from these descriptions and from the
 16 box presented as the exhibit, Western Wireless has
 17 deployed a fixed wireless service.

18 Now, the FCC has provided guidance in
 19 distinguishing between mobile and fixed service
 20 and, I might add, transportable service. For
 21 example, in its discussion regarding satellite
 22 services it states that, quote, services provided
 23 to or from a transportable platform that cannot
 24 move when the communications service is offered
 25 should be -- should not be included within the

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1 definition of mobile service. The operation of the
 2 Western Wireless unit is intended to remain within
 3 the residence during the operation and by this
 4 standard, the service is not mobile.
 5 Q. If the Western Wireless service is not a
 6 mobile service, how should the service be
 7 identified?
 8 A. Well, Western Wireless is offering a
 9 competitive fixed wireless service in Regent, North
 10 Dakota. This service is functionally equivalent to
 11 basic exchange telecommunications radio service,
 12 known as BETRS, because the radio loop merely takes
 13 the place of wire or cable in the delivery of basic
 14 local exchange service. Western Wireless's service
 15 is a fixed wireless service intended to replace the
 16 wire loop with a radio loop.
 17 Q. How does the Federal Communications
 18 Commission currently define "fixed wireless
 19 service"?
 20 A. In 1993, the FCC initiated a proceeding to
 21 implement the adoption of legislative changes to
 22 Section 332 of the Act. And in their Second Report
 23 and Order issued the following year, the FCC
 24 declared that, quote, mobile service continues to
 25 be defined as a radio communications service

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1 carried on between mobile stations or receivers and
 2 land stations, and by mobile stations communicating
 3 among themselves. This definition includes both
 4 one-way and two-way radio communications services.
 5 The FCC further states that, quote, We agree with
 6 the commenters that the purpose of the legislation
 7 is to include all existing mobile services within
 8 the ambit of 332. Thus, we agree with commenters
 9 that all public mobile services, private land
 10 mobile services, and mobile satellite services
 11 should be included within the definition. However,
 12 footnote 46 of this paragraph states that, quote,
 13 this finding does not apply to rural radio service,
 14 including BETRS, which is a fixed service.

15 The FCC has determined that the
 16 substitution of a radio loop for a wire loop in the
 17 provision of BETRS does not constitute mobile
 18 service for purposes of our definition of mobile
 19 service. Because Western Wireless's service is a
 20 fixed wireless service and is functionally
 21 equivalent to BETRS, it is not a mobile service.

22 In comments to the FCC, Western Wireless,
 23 itself, has stated that, quote, the Commission has
 24 stated that if services are substitutable, they are
 25 functionally equivalent and must be regulated in

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1 the same manner, end quote. The service that
 2 Western Wireless is offering in Regent is
 3 functionally equivalent to BETRS and therefore by
 4 applying the functional equivalence test described
 5 by Western Wireless, itself, in comments to the
 6 FCC, Western Wireless should receive the same
 7 regulatory treatment.

8 Q. Does a carrier need state certification
 9 for BETRS fixed wireless service?

10 A. The FCC determined that because of the
 11 nature of BETRS, the FCC requires that a service
 12 provider be a state-certified local exchange
 13 carrier or, if not a certified LEC, have some form
 14 of permission from the state to provide basic
 15 exchange radio service. They go on to say, quote,
 16 We believe this provider state certification or
 17 permission is necessary because of the basic
 18 exchange nature of the service.

19 Q. Can Western Wireless's fixed wireless
 20 service be considered an auxiliary, ancillary or
 21 incidental service?

22 A. No, it cannot. In 1998 the FCC began a
 23 proceeding to permit the liberalization of
 24 auxiliary service offerings. In this proceeding,
 25 the FCC addressed the issue of auxiliary common

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1 carrier services that are fixed services, very
2 similar to what -- what we're doing now. The FCC
3 stated in its Report and Order that it indicated
4 that the FCC considers a BETRS type of fixed use of
5 cellular frequencies more than an incidental
6 service.

7 The FCC also explained the basic nature of
8 BETRS. They said that BETRS has no specified
9 technology, but involves the use of mobile
10 frequencies in radio loops between a basic exchange
11 telephone subscriber and a telephone company
12 central office.

13 Western Wireless's fixed service is a
14 BETRS type of fixed use of cellular frequencies.
15 With reference to the type of regulation for a
16 fixed wireless service, the order acknowledges
17 state jurisdiction over BETRS fixed wireless
18 service when the service is providing basic local
19 exchange service.

20 Q. Are you familiar with the 1996 FCC Order
21 96-283?

22 A. Yes, I am. This particular order contains
23 a First Report and Order and Further Notice of
24 Proposed Rulemaking released by the FCC in 1996.

25 Q. Does the 1996 FCC order address the

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1 ability of CMRS providers to use their spectrum
2 allocation for fixed wireless service?

3 A. Yes, it does. The FCC 96-238, the First
4 Report and Order, addresses fixed wireless service
5 in both the First Report and Order and in the
6 Further Notice of Proposed Rulemaking. In this
7 proceeding the FCC addresses the use of CMRS
8 spectrum for fixed wireless service.

9 It's important to note, and I'll quote,
10 the FCC states that, quote, we conclude that
11 licensees should have maximum flexibility to
12 provide fixed or mobile service or combinations of
13 the two over spectrum allocated for CMRS services,
14 including PCS, cellular, and SMR services.

15 We also -- we conclude that service
16 providers using spectrum allocated for CMRS should
17 have the flexibility to use fixed services on a
18 co-primary basis with mobile services. Thus,
19 service providers could choose to provide
20 exclusively fixed services, exclusively local
21 services, or any combination of the two, end
22 quote.

23 Note that in the FCC order, the reference
24 to spectrum is significant. This order permits a
25 CMRS licensee to use its spectrum for fixed

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1 wireless service. The order does not resolve,
2 however, how to regulate a fixed wireless service
3 using CMRS spectrum. In fact, the order refuses to
4 define fixed wireless service as commercial mobile
5 service, a position that was advocated by CMRS
6 providers, including Western Wireless, in that
7 proceeding.

8 The FCC concludes in paragraph 39 of that
9 same order, For the reasons discussed below, we
10 conclude that further development of this record is
11 needed to resolve the issues -- the issue of how
12 fixed services allowed by this report and order
13 should be regulated. Therefore, we address this
14 issue in the Further Notice of Proposed Rulemaking
15 below.

16 The FCC order indicates that CMRS
17 licensees may use their CMRS spectrum for fixed
18 wireless service. This decision is codified in
19 Federal Regulations -- 47 Code of Federal
20 Regulations, Part 22.901.d. I've attached this
21 particular section as attachment 1 of my
22 testimony. This rule describes the allowable use
23 of spectrum. It does not address how this spectrum
24 is to be regulated, nor does it state that fixed
25 wireless services is defined as mobile service.

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1 The FCC order gives Western Wireless a
2 permit to use its spectrum for fixed wireless
3 service. The '96 order does not define fixed
4 wireless service as mobile service and does not
5 give Western Wireless carte blanche authority to
6 offer fixed wireless service in disregard of state
7 regulatory authority. Neither the federal statute
8 nor the FCC has preempted state authority to
9 regulate fixed wireless service provided on a
10 nonincidental basis.

11 Q. What does the Federal Communications
12 Commission say regarding the regulation of fixed
13 wireless service in its 1996 Further Notice of
14 Proposed Rulemaking?

15 A. The '96 Further Notice of Proposed
16 Rulemaking seeks comments on how to proceed in
17 defining and regulating fixed wireless service.
18 Absent a definitive order from the FCC that fixed
19 wireless service should be treated as commercial
20 mobile service, nonincidental fixed wireless
21 service is not commercial mobile service.

22 This Further Notice of Proposed Rulemaking
23 addresses the regulation of fixed wireless service
24 that uses CMRS spectrum. This particular proposal
25 is significant in this proceeding in several

1 important paragraphs, and I would like to quote a
2 few.

3 At paragraph 45, the NARUC, quote, opposes
4 the expansion of the definition of CMRS to include
5 fixed wireless local loop services. NARUC contends
6 that the Commission's proposal would affect
7 facilities currently subject to state commission
8 jurisdiction both directly and indirectly. NARUC
9 asserts that allowing CMRS providers to offer fixed
10 service would promote, quote, a federal policy that
11 is not technologically neutral and has the impact
12 of deployment of one technology over another, end
13 quote. NARUC argues that the state regulation of
14 CMRS wireline services differs significantly; thus,
15 if the Commission's proposals were adopted, the
16 impact would be to favor a particular technology
17 (wireless) for local access. NARUC also argues
18 that the Commission's proposal to -- proposed
19 regulatory scheme contradicts prior decisions
20 excluding fixed wireless service such as BETRS from
21 the definition of mobile services.

22 The fact that the FCC describes NARUC as,
23 quote, opposing the expansion of the definition of
24 CMRS to include fixed wireless local loop services,
25 end quote, indicates that the FCC and NARUC

1 understood the current regulatory status of mobile
2 services does not include nonincidental fixed
3 wireless local loop service.

4 This understanding that fixed wireless
5 local loop is not treated as mobile service is
6 further expressed in the comments of the CMRS
7 providers themselves. The FCC states in paragraph
8 46 of that notice, Many commenters -- CMRS
9 commenters urge the Commission to apply uniform
10 regulatory treatment to all fixed and mobile
11 services offered by carriers on CMRS spectrum. The
12 record suggests, however, that under the flexible
13 service rules we adopt today there may be a variety
14 of different uses of fixed wireless technologies by
15 CMRS providers, some of which may raise distinct
16 regulatory issues.

17 The FCC has not adopted the CMRS industry
18 suggestion that mobile service includes fixed
19 wireless services.

20 Two more paragraphs. Paragraph 47, Based
21 on our review of the record in this proceeding,
22 quote, the FCC says, we believe it is premature to
23 attempt a final comprehensive determination
24 regarding the regulatory treatment of these various
25 types of fixed services that may be offered by

1 licensees. While some commenters argue that all of
2 the fixed offerings described above should be
3 treated as sufficiently related to CMRS to justify
4 uniform regulatory treatment, we believe that a
5 uniform approach would be premature at this time.
6 Instead, we believe that the regulatory issues
7 raised by this proceeding require further
8 development of the record and more specific
9 analysis related to the particular fixed service
10 offerings that carriers develop. Therefore, we
11 propose to refine the approach set forth -- the
12 approach set forth in the Notice by seeking comment
13 on additional guidelines for determining when fixed
14 wireless services may fall within the scope of CMRS
15 regulation.

16 Paragraph 48, At the outset, we emphasize
17 that our decision to allow carriers to offer
18 co-primary fixed services on spectrum allocated for
19 CMRS does not alter in any way our regulatory
20 treatment of fixed services that have been provided
21 by CMRS providers under our prior rules. In the
22 CMRS Second Report and Order, we stated that
23 ancillary, auxiliary, and incidental services
24 offered by CMRS providers fall within the statutory
25 definition of mobile service, and are subject to

1 CMRS regulation. We reaffirm that determination
2 here. In our order today, however, we have
3 broadened the potential scope of fixed services
4 that may be offered by CMRS providers. We
5 therefore seek further comment on the regulatory
6 treatment of such fixed services that may not be
7 considered ancillary, auxiliary or incidental to
8 mobile service.

9 Absent a definitive order from the FCC
10 that fixed wireless service should be treated as
11 commercial mobile service, fixed wireless service
12 is not commercial mobile service. A fixed wireless
13 service is regulated by the state commission and
14 providers of this service should be required to
15 obtain a state certificate of public convenience
16 and necessity.

17 Q. What does the Communications Act, as
18 amended, state regarding the jurisdictional
19 authority of state commissions for fixed wireless
20 service?

21 A. Well, there are two sections of the
22 Communications Act that address jurisdictional
23 authority in this matter: Section 2(b) and
24 221(b). I've attached those as attachments 2 and 3
25 of my testimony. Section 221(b) of the Act

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1 addresses the jurisdictional authority of all radio
 2 service that is not classified as commercial mobile
 3 service. It indicates that states have authority
 4 over fixed wireless services.
 5 Q. Do any sections of the Act preempt state
 6 authority over wireless service?
 7 A. The state preemption section of the Act
 8 for mobile services is found in Section 332. And I
 9 have attached that as attachment 4 of my
 10 testimony. Section 332 shows that the FCC preempts
 11 state regulation of mobile services in certain
 12 instances. However, state laws for regulations of
 13 nonincidental fixed wireless service remain in full
 14 force.
 15 Q. What alternatives regarding regulation of
 16 fixed wireless did the FCC seek comment on in their
 17 Further Notice of Proposed Rulemaking?
 18 A. There are several paragraphs that suggest
 19 alternative treatments of fixed wireless service.
 20 In these paragraphs, the FCC seeks further comment
 21 because the record is not sufficient to make a
 22 decision. I have included excerpts from this
 23 particular notice in attachment 5 of my testimony.
 24 The clear message from this FNPR, Further Notice of
 25 Proposed Rulemaking, is that there are differences

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1 of opinion regarding the regulatory treatment of
 2 fixed wireless service and that the FCC has not
 3 determined that fixed wireless service is mobile
 4 service governed by Section 332 of the
 5 Communications Act as amended.
 6 Q. In addition to a state PC&N certificate,
 7 what else does Western Wireless need to do in order
 8 to provide fixed wireless service in Regent, North
 9 Dakota?
 10 A. Western Wireless must follow all
 11 applicable federal and state laws and regulations
 12 pertaining to offering a competitive local exchange
 13 service.
 14 Q. Does this end your testimony?
 15 A. Yes, it does.
 16 MR. MAUS: Mr. Binek, I would like to pass
 17 out --
 18 MR. BINEK: Mr. Maus, do you wish to offer
 19 CTC Exhibit 5?
 20 MR. MAUS: Yes, we would. We would offer
 21 Exhibit 5 at this time.
 22 MR. BINEK: Mr. DeJordy, do you have any
 23 objection?
 24 MR. DEJORDY: No objections.
 25 MR. BINEK: CTC Exhibit 5 is admitted.

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1 You may proceed.
 2 MR. MAUS: That concludes our direct
 3 examination.
 4 MR. BINEK: Mr. DeJordy, do you have any
 5 cross-examination?
 6 MR. DEJORDY: Yes.
 7 CROSS-EXAMINATION
 8 BY MR. DEJORDY:
 9 Q. Good morning, Mr. Meredith.
 10 A. Good morning.
 11 Q. You would agree that commercial mobile
 12 radio services are not subject to state commission
 13 entry and rate regulation? Would you agree with
 14 that?
 15 A. Yes. As I indicated in my testimony,
 16 state entry and rate regulation is preempted under
 17 Section 332 for commercial mobile service.
 18 However, in that same section there are exceptions
 19 that state commissions can seek before the FCC.
 20 Q. And what are those exceptions?
 21 A. Well, the section actually identifies the
 22 ability of a state commission to request from the
 23 FCC the regulation or treatment -- regulatory
 24 treatment for commercial mobile service.
 25 Q. So would it be appropriate for this state

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1 commission, if it determined that this service --
 2 wireless residential service was -- should be
 3 regulated by this Commission, that they should
 4 approach the FCC and get their buyout of that or
 5 get their approval of that?
 6 A. Absolutely not. The service that we're
 7 talking about is a fixed wireless service. It's
 8 not identified as mobile service, and so it's not
 9 governed by Section 332 of the Act.
 10 Q. And how do you define "fixed services"?
 11 A. On page 7 of my testimony I had direct
 12 questions related to that. Do you want me to refer
 13 to that or --
 14 Q. You're referring to pages -- page 7, lines
 15 1 through 5, of your testimony?
 16 A. No. On page 7, starting on line 20, is --
 17 the question starting on line 21 on page 7 and
 18 concluding on page 9, line 3, is my answer to the
 19 question, how does the FCC currently define "fixed
 20 wireless service"?
 21 Q. Your definition then is in the negative?
 22 You don't define "fixed services"; you're defining
 23 what is "mobile services"; is that correct?
 24 A. No. No. That's not correct.
 25 Q. Can you refer me to where the definition

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1 of "fixed services" is in your testimony?

2 A. Page 8, starting on line 5, is one
3 reference. The FCC states that we agree with the
4 commenters that the proposed -- purpose of the
5 legislation is to include all existing mobile
6 services within the ambit of Section 332. Then
7 further on, on line 9, However, footnote states
8 that this finding does not apply to rural radio
9 service, including BETRS, which is a fixed
10 service. In this particular citation the BETRS, as
11 I've described in other portions of my testimony,
12 is the replacement of a radio loop for a -- the
13 replacement of a wire loop for a radio loop and is
14 used to provide basic local exchange service to
15 include a calling scope -- a defined calling scope
16 and pretty much unlimited usage for that defined
17 calling scope.

18 Q. So in your testimony you're referring to
19 BETRS as a fixed service, but you don't have a
20 definition for this Commission to consider in
21 defining what actually is a fixed service?

22 A. No. I also have in my testimony -- we had
23 the discussion with Mr. Maus on the issue of fixed
24 and mobile service and what that distinction is.

25 Q. But there's no definition of "fixed

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1 service"? I still don't see a definition here of
2 "fixed service." I know you make some references
3 to mobile services and the fact that BETRS is a
4 fixed service, but you don't have a definition of
5 what exactly is a "fixed service"?

6 A. Well, the -- on page 10 of my testimony
7 we've identified that BETRS is a fixed service, and
8 line 5 through 8 of page 10 of my direct testimony
9 says, BETRS has no specified technology, but it
10 involves the use of mobile frequencies in radio
11 loops between a basic local exchange subscriber
12 (premise) and a telephone company's central
13 office. So the replacement of radio loop is -- for
14 a wire loop is a fixed service.

15 Q. So it's your definition that a fixed
16 service would mean the replacement of -- would be
17 basically wireless local loop service?

18 A. It certainly includes it, yes.

19 Q. And that would apply regardless of whether
20 the customer premise equipment is fixed to the home
21 or mobile?

22 A. The -- yes.

23 Q. So if a customer has a unit that is used
24 at his home but also can be used elsewhere,
25 elsewhere meaning outside of his home, in another

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1 home, out in the backyard, whatever, that would
2 still be a fixed service according to your
3 definition?

4 A. Yeah. In looking at the exhibit, which
5 I'll describe as the box, the box certainly is
6 transportable, but under -- it is not mobile. The
7 Act actually has a definition of what a mobile
8 station is. It's in Section 153, paragraph 28, and
9 it says the term "mobile station" means a radio
10 communication service capable of being moved which
11 ordinarily does move. The box does not ordinarily
12 -- I grant you that you can transport it to your
13 grandmother's house and use it and plug it into her
14 power system, power supply and use that phone at
15 her house. That is a transportable function.
16 That's not a mobile function. That's also
17 confirmed by the reference that I had in my direct
18 testimony regarding the use of satellite stations,
19 where if it's stationary when it's in operation,
20 it's not considered mobile service.

21 Q. You heard the testimony previously by Kim
22 Schmidt that indicated that the unit can operate on
23 battery backup; is that correct?

24 A. Yes.

25 Q. And you also heard the testimony that the

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1 unit could be used while driving in a car?

2 A. Yes.

3 Q. So in that configuration the unit would be
4 mobile?

5 A. No, it would not, because it's not
6 ordinarily or intended to be used in those
7 functions. There are many things that a lot of --
8 a lot of people can do with different types of
9 services. We can't limit that ability for people
10 to expand that. However, the ordinary and intended
11 use of that box is for a fixed placement for mobile
12 -- for a replacement of wireline service. It has
13 mounted -- has brackets to be mounted on a wall, or
14 it does not have a handle as I can see it from
15 here, has no handle that necessarily indicates that
16 it is mobile and transportable.

17 Q. So based upon your definition, if someone
18 had a bag phone that they used just in the home,
19 would that phone then be considered a fixed
20 service?

21 A. I'm not sure. I had a bag phone years
22 ago, it had a handle, I carried it around, used it
23 in my car, used it at home, and so forth, so I
24 don't believe that a bag phone would have the
25 ordinary and intended use to be simply a

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1 replacement of wireline loop.

2 Q. And is your ordinary, intended use based
3 upon how the customer uses the unit?

4 A. That's actually for you to decide. As an
5 attorney, that is an issue that needs probably
6 further analysis. From my perception, yes.

7 Q. You talked about how BETRS is subject to
8 state commission regulation. It's your position
9 that BETRS is essentially the same thing as
10 wireless residential service and, therefore,
11 subject to state commission regulation?

12 A. Yes, it is. The BETRS, as I described, is
13 the replacement of wire loop with radio loop, and
14 that's identical or it meets the functional
15 equivalence of what Western Wireless is providing
16 in Regent, North Dakota.

17 Q. Isn't it true that the FCC, not a state
18 commission, has made the conclusion that BETRS is
19 subject to state commission regulation?

20 A. Yes. The order that I referred to says
21 that the FCC has given -- or has allowed or has
22 granted state commissions to have that regulatory
23 option. That does not preclude a state from having
24 that regulatory option anyway. If somebody -- if
25 the FCC tells somebody to sneeze, does it mean that

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1 they are only entitled to sneeze at that time?

2 Q. You would agree with me that BETRS is --
3 has been concluded to be a service that is subject
4 to state commission regulation whereas commercial
5 mobile radio service is a service considered to be
6 subject to FCC regulation and not state entry and
7 rate regulation?

8 A. Yes, I would. The BETRS service is
9 considered a fixed wireless service and is not
10 considered mobile service.

11 Q. You reference the FCC's 1996 order and you
12 quoted statements from the 1996 order that were
13 attributed to NARUC and you also talk about FCC's
14 conclusions in paragraph 46, 47, and 48. Isn't it
15 true that in paragraph 48 that the FCC concluded
16 that incidental services which could include fixed
17 services offered by CMRS providers would continue
18 to be subject to FCC regulation and not state
19 commission entry and rate regulation?

20 A. That particular paragraph does indeed
21 refer to that this particular order does not
22 supersede existing or treatment -- regulatory
23 treatment or prior regulatory treatment of
24 incidental services.

25 Q. And under that prior regulatory treatment,

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1 fixed services that are offered on an incidental
2 basis are not subject to state commission entry and
3 rate regulation; isn't that true?

4 A. Yes, that is true. Incidental fixed
5 service is not subject generally -- not generally
6 subject to state regulation for entry. However, as
7 I indicated in my testimony on two occasions,
8 BETRS, which is a fixed wireless service, is not an
9 incidental service, and then, furthermore, the FCC
10 has also concluded that BETRS type of fixed
11 wireless service using CMRS frequencies is not an
12 incidental service.

13 Q. Isn't it true that BETRS is not considered
14 an incidental service because the only service
15 being provided by a BETRS provider is the fixed
16 service?

17 A. I do not know that. I cannot affirm that.

18 Q. But would you agree with me that BETRS is
19 a fixed service and is not a mobile service?

20 A. Yes.

21 Q. Therefore, would you agree with me that
22 because BETRS is primarily a fixed service, if not
23 exclusively a fixed service, that that is the
24 reason why it is subject to state entry and rate
25 regulation?

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1 A. No, I would not. In my testimony I have
2 referred to the fact that the reason why state
3 regulation is used for BETRS services is because of
4 the basic nature, the nature of the basic local
5 exchange service that's being offered.

6 Q. Would you agree that BETRS is not a mobile
7 service offering?

8 A. Yes, I would.

9 Q. So you would -- would you also agree with
10 me that there is a difference between BETRS and
11 commercial mobile radio service? I can restate
12 it.

13 A. Please.

14 Q. Would you agree with me that BETRS is
15 primarily, if not exclusively, a fixed service
16 where CMRS is primarily a mobile service?

17 A. CMRS, commercial mobile radio service,
18 licensees can use their service for mobile service
19 and, as the FCC order in 1996 allows, for fixed
20 service, as well. But don't confuse, however, the
21 issue of BETRS, because BETRS -- while it is a
22 fixed service for regulatory purposes, BETRS is
23 very similar in its functionality to -- actually
24 it's equivalent to the service that we have
25 presented here before us today. There are reported

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1 instances of where BETRS -- BETRS subscribers have
2 actually used that service in a -- in a -- you
3 know, transporting their service to hunting camps
4 and to other locations and then using that service
5 at that location, as well. So it's functionally
6 identical to what we've had described here today as
7 wireless residential service.

8 Q. But just stepping back a bit, would you
9 agree with me that BETRS is regulated by the state
10 commission as subject to state entry and rate
11 regulation because it is primarily, if not
12 exclusively, a fixed service?

13 A. Yes.

14 Q. In that the difference in a commercial
15 mobile radio service offering like what Western
16 Wireless is offering here in the state of North
17 Dakota is that Western Wireless is offering
18 primarily a mobile service offering; is that
19 correct?

20 A. From the testimony that I've heard today
21 from you -- from your witness, you do have a mobile
22 service offering that Western Wireless provides.

23 Q. So BETRS is not -- BETRS is not subject to
24 state entry and rate regulation because it is an
25 incidental fixed service being offered by the

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1 provider?

2 A. I'm sorry. Repeat the question.

3 Q. Is it true that BETRS is not subject to
4 state entry and rate regulation because it is --
5 I'll restate that.

6 BETRS is not subject to state entry and
7 rate regulation because it is a fixed service --
8 primarily a fixed service, if not exclusively?

9 A. No, I think that's incorrect. BETRS is
10 subject to state regulations.

11 Q. That's what I meant. Maybe I misstated.
12 Would you agree with me that a fixed service that
13 is offered on an incidental basis by a CMRS carrier
14 is not subject to state entry and rate regulation?

15 A. A fixed service provided on an incidental
16 basis is subject to CMRS regulation, which may or
17 may not include a component of state regulation,
18 depending on the circumstances.

19 Q. Would you agree with me that the FCC
20 currently has a proceeding pending in which it
21 would make some conclusions as to whether a fixed
22 service that is not offered on an incidental basis
23 by a CMRS carrier, whether those types of services
24 are subject to state commission regulation or
25 continue to be subject to CMRS regulation?

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1 A. Yes. The Further Notice of Proposed
2 Rulemaking that was issued in 1996 has had a cycle
3 of comments. The FCC has received those comments
4 and has not taken any action to date.

5 Q. And it is your position that this
6 Commission should not await or seek guidance from
7 the FCC on this matter, but proceed and regulate a
8 fixed service as a nonCMRS service?

9 A. Absent the FCC making a determination, the
10 state regulations and requirements remain in full
11 force. Rules and regulations regarding fixed
12 wireless service are identified in the Federal Act
13 and the state -- this state commission has the
14 regulatory authority and duty to regulate that
15 service.

16 Q. The FCC -- this state commission's
17 authority to regulate a local exchange carrier is
18 -- or public utility is based upon it providing
19 local exchange service; is that correct?

20 A. I do not know the answer to that question.

21 Q. Would you agree that this commission would
22 first need to make a determination that wireless
23 residential service is a local exchange service
24 prior to making any determination as to whether
25 state entry and rate regulation applies?

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1 A. I'm sorry. I do not know the extent of
2 the state regulations that would apply, and so I
3 can't answer that question.

4 MR. DEJORDY: I have no further
5 questions.

6 MR. BINEK: Mr. Johnson.

7 MR. JOHNSON: Yes.

8 CROSS-EXAMINATION

9 BY MR. JOHNSON:

10 Q. Mr. Meredith, there's quite a bit of
11 discussion about the fixed service proposed by
12 Wireless being, I think the words were,
13 functionally equivalent to the BETRS service. Is
14 that the way you're describing the service?

15 A. Yes. I made reference in my testimony --
16 my direct testimony that the replacement of wire
17 loop with radio loop similar to what BETRS is
18 offering is the functional equivalent to what
19 Western Wireless is offering in Regent, North
20 Dakota.

21 Q. And if I understand your argument is that
22 because then BETRS is regulated by states or that
23 the FCC allows states to regulate BETRS service,
24 then states should then also be allowed to regulate
25 the fixed wireless service that's at issue here

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1 today; is that correct?

2 A. Yes. You do me honor. That's not my
3 argument. That's Western Wireless's argument
4 before the FCC that a functional equivalent service
5 needs to be regulated in the same fashion.

6 Q. Was that in the BETRS proceeding?

7 A. That was in the 1996 proceeding. Western
8 Wireless filed a response to both the First Report
9 -- First Notice of Proposed Rulemaking and also
10 the Further Notice of Proposed Rulemaking.

11 Q. The question I have, I guess, is that if
12 -- if your interpretation of what has gone on in
13 the FCC in the past is so clear that this fixed
14 wireless service should be regulated by states, why
15 has it taken the FCC some two years to reach the
16 same conclusion that you obviously have reached?

17 A. No. The conclusion that I have before me
18 is that the issue -- CMRS providers are able to use
19 their spectrum for co-primary services, fixed and
20 wireless or a combination of the two, as I
21 referenced in my testimony. The regulatory
22 treatment of that fixed component remains for --
23 from the FCC, they are wondering what they should
24 do, if anything. Absent doing anything, it's
25 regulated in the same fashion as it's always been

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1 regulated. Incidental service is regulated by CMRS
2 service, and nonincidental fixed wireless service
3 is regulated by state commissions.

4 Q. Of course, it hinges on whether the
5 service proposed by Western Wireless is incidental
6 or not; is that correct?

7 A. That is a -- that is a very important
8 question.

9 Q. Then you heard Miss Schmidt testify when I
10 asked her about the facilities that were needed to
11 provide the fixed service as distinguished from the
12 CMRS service. As I understand it, the facilities
13 are the same, one and the same, and they are
14 operated the same. Is that your understanding?

15 A. I heard that testimony, yes, this morning.

16 Q. And do you agree with that testimony?

17 A. I don't have any reason to disagree with
18 that testimony.

19 Q. So the question the Commission is going to
20 have to face is, you know, our PC&N law just says
21 that no public utility shall begin construction or
22 operation of a public utility plant or system
23 without getting a PC&N. And if on January 6th
24 Western Wireless was providing a CMRS service in
25 Regent and the next day, without any change of

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1 either construction or operation, is then providing
2 a fixed wireless service, where do you find that
3 there is either a construction or an operation that
4 would fall within the Commission's jurisdiction?

5 A. Well, let me give you an example that's
6 more of a wireline example. If we had a situation,
7 a wire to a customer, we would have jurisdictional
8 separation of that loop. We have interstate calls
9 going over that loop, we have intraLATA, interLATA
10 telephone calls, and it's a well-rounded procedure
11 to actually jurisdictionally separate that
12 traffic. In this particular situation the
13 Commission needs to -- needs to -- your question
14 addressed the issue of having to build additional
15 facilities or -- if I heard that correctly. They
16 do in fact have facilities that they're using for
17 that service. And so, therefore, the regulation
18 can or cannot apply. That's not my -- that's not
19 my call. I'm not -- I'm not -- as I indicated in
20 cross-examination, I'm not prepared to answer
21 questions about North Dakota law.

22 Q. Excuse me just a minute. Again, I just
23 don't want to take too much time with this, but it
24 appears that the Commission is maybe facing a
25 quandary or in a very difficult position if on July

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1 -- or on January 7th -- January 6th, of course, it
2 didn't have jurisdiction over Western Wireless's
3 CMRS provisioning service. On January 7th when it
4 implemented the fixed wireless service in Regent,
5 North Dakota, it then -- based on your argument
6 then it does have jurisdiction over this fixed
7 wireless service. So it appears that then on
8 January 7th the Commission should have -- in your
9 opinion, should have immediately shut down or
10 enjoined Western Wireless from using those
11 facilities to provide the wireless service that it
12 was providing, and I'm wondering, how do you
13 recommend that the Commission issue an order which
14 would have affected only the fixed wireless service
15 as distinguished from the CMRS service?

16 A. Your chronology targets January 6th as
17 this Commission not having authority over CMRS
18 service offerings.

19 Q. That's correct.

20 A. I would modify that statement. This
21 Commission did not have authority over mobile
22 service January 6th. It retained and still has and
23 had before even 1996 the jurisdiction over fixed
24 wireless service.

25 Q. Well, again -- of course, we're listening

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1 to your argument with respect to what's mobile and
 2 what's fixed, and Western Wireless has a directly
 3 opposing argument as to what's fixed and what's
 4 wireless, and the Commission is going to have to
 5 make that decision. I think it also hinges on what
 6 is incidental service. And the question I have and
 7 the problem I have is, if all the facilities and
 8 the system and everything is in place to provide
 9 the CMRS service and without any additional
 10 facility or change of operation Western Wireless
 11 can provide fixed wireless service, then isn't that
 12 fixed wireless service incidental to the wireless
 13 service?

14 A. I don't think so, nor does the FCC.

15 Q. Now, Western Wireless in its brief and its
 16 motion to dismiss talks about recommending that the
 17 Commission not take any action, not require that it
 18 -- require a certificate here in North Dakota
 19 until the FCC completes its rulemaking, and who
 20 knows whenever that will be, but they suggest that
 21 requiring a PC&N at this time would impose a
 22 regulatory burden on Western Wireless. I'm
 23 interested in your opinion, I guess, is the
 24 requiring of a certificate of public convenience
 25 and necessity a regulatory burden on the industry?

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1 A. This certification process is a safeguard,
 2 as I mentioned in my testimony. It allows the
 3 Commission to address some very basic questions
 4 about the ability, the service, the managerial
 5 ability, the technical ability, and that's a
 6 safeguard for the consumers of North Dakota
 7 telephone services.

8 Q. So in that respect --

9 A. If it's a burden on a particular carrier,
 10 it's a burden we all bear.

11 Q. But it would be a regulation -- a
 12 regulatory burden on the industry; would that not
 13 be a fair statement?

14 A. It is a requirement.

15 Q. You don't want to use the words
 16 "regulatory burden"?

17 A. It's a regulatory requirement. "Burden"
 18 is a -- can be used as a pejorative word, and I
 19 choose not to use it.

20 Q. Well, is regulation then good in some
 21 instances?

22 A. In some instances regulation is essential.

23 Q. Is essential.

24 A. And is good, beneficial, grandma and apple
 25 pie.

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1 Q. And if the Commission were considered as
 2 being regulatory rather than competitive, you would
 3 say that that criticism then would not be fair in
 4 your mind in today's day and age?

5 A. I'm sorry. Repeat the question.

6 Q. I said if the Commission were criticized
 7 for being more -- too regulatory in today's
 8 environment, you would consider that to be then an
 9 unfair criticism certainly in certain
 10 circumstances, particularly in this circumstance?

11 A. Again, your reference to -- I'm sorry.

12 Your reference to regulatory brings me back to that
 13 "burden" word, where you're indicating that it's a
 14 harm or a burden or something bad, and I've
 15 indicated in my prior answer that I don't agree
 16 with that in certain instances.

17 Q. I guess maybe we do agree that there are
 18 certain circumstances and conditions under which
 19 regulation, in your words I think, is essential to
 20 protect the consumer interest; is that correct?

21 A. Yes, there are. Yes.

22 Q. And it will have to be up to the
 23 Commission or some other regulatory body or the
 24 legislature to determine just when there is enough
 25 or too much or too little regulation?

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1 A. It is their judgment and it's their --
 2 their call.

3 MR. JOHNSON: That's all the questions I
 4 have. Thank you.

5 MR. BINEK: Commissioner Wefald.

6 EXAMINATION

7 BY COMMISSIONER WEFALD:

8 Q. You know, when this particular issue --
 9 when we realized that all the other issues had been
 10 settled except for the PC&N and before I started to
 11 do some reading, it sounded like a pretty simple
 12 issue on this matter, and when I, you know, began
 13 doing reading about this, I suddenly realized that
 14 it isn't such a simple matter because there's a lot
 15 of issues involved and a lot of uncertainty, you
 16 know, about federal regulations, state regulations,
 17 so it would be so nice if it was really clearcut,
 18 but that's why we're here, because it isn't really
 19 clearcut. So we do have some, you know, tough
 20 decisionmaking ahead of us as a Commission as we
 21 look at these issues, and -- and even -- I spent
 22 quite some time reading this First Report and
 23 Order, Further Notice of Proposed Rulemaking from
 24 the FCC August 1st, 1996.

25 A. Yes, that's the FCC '96 document we have

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1 been talking about.

2 Q. Right. And I'll certainly go back and
3 read some of the others that you've quoted today,
4 and I'm hoping that you have cites. As you were
5 reading along you didn't cite.

6 A. Yes. All of the documents are cited in
7 the testimony that you have before you by federal
8 record number so you can certainly find them.

9 Q. Right.

10 A. I also have them available electronically
11 and they have been pulled off because some of those
12 prior to like '95 it's somewhat difficult to get
13 copies from regular processes, so you go to The
14 Federal Register to get those. I can provide those
15 if you wish. I have copies. I have an extra copy
16 here of those orders.

17 Q. We'll let you know. Mm-hmm. Maybe I
18 should just say yes. Sure, that would be great,
19 then our staff doesn't have to work on trying to
20 find those. That would be good.

21 It does hinge on some very interesting
22 questions, you know, whether it's -- you know, in
23 paragraph 48 about we stated that ancillary,
24 auxiliary, and incidental services offered by CMRS
25 providers fall within the statutory definition of

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1 mobile service and are subject to CMRS regulation.
2 We reaffirm that determination here. Then they go
3 on, then they say that back here, in paragraph 53,
4 we believe that ultimately the regulatory issues
5 may require resolution on a case-by-case basis.

6 A. Yes.

7 Q. Maybe that's what we're doing here, is
8 looking at this case as a commission to determine
9 on a case-by-case basis whether -- in this
10 proceeding for this particular service whether this
11 needs to be -- require a license, a PC&N by this
12 state commission.

13 A. Mm-hmm.

14 Q. And I would like to ask you the same
15 questions that I asked earlier, all right, to get
16 your answers on the record about these same
17 issues.

18 A. Sure.

19 Q. Do you -- how do you view the relative
20 mobility of the mobile stations used in conjunction
21 with this fixed service?

22 A. I view this service as being fixed. That
23 box is a transportable box, granted. It can be
24 moved to another location and utilized. Its
25 intended use is not for mobile service. According

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1 to the Act, the ordinary use as I described it, the
2 mobile station means a radio communication station
3 capable of being moved and which ordinarily does
4 move. That particular box does not ordinarily
5 move, nor is its intent to be moved in the fashion
6 that they've described. Western Wireless tries to
7 describe it that way in order to capture this
8 hybrid nature -- they're trying to really amplify
9 that hybrid nature. But the hybrid nature is
10 really a menagerie. The box is transportable, but
11 it's not mobile.

12 Q. I understand how both sides will put a
13 different perspective on their answers. I'm just
14 asking you to answer without the --

15 A. That's fine.

16 Q. Do you view the fixed service as part of a
17 larger package which includes mobile service or --
18 let's see. Is the fixed service part of a larger
19 package which includes mobile service, or is it
20 offered alone?

21 A. My understanding is that it is offered
22 alone, as a replacement for existing wireline
23 service. The support of that comes from actual
24 quotations and actual explanations by Western
25 Wireless.

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1 Q. Do you -- what is the size -- I think this
2 is a factual question. Do you have any comments
3 about the size of the service area over which the
4 fixed wireless service is provided? We learned
5 what the size of the service area is. Do you have
6 any comments on that?

7 A. The only comment, I would just like to
8 reiterate that the fact that it has a local calling
9 scope -- an unlimited local calling scope of a
10 defined size -- really doesn't matter what size for
11 this particular point that I'm making, but the fact
12 that there is a local calling scope that is defined
13 makes it very much more like a BETRS or even a
14 fixed wireline service where you have local calling
15 scope and unlimited calling within that calling
16 scope.

17 Q. They're going to provide me with the
18 amount of mobile versus fixed traffic over the
19 wireless system, and so perhaps that's just a
20 factual matter. Do you have any comments on that?

21 A. Well, I do have one question on that.

22 Q. Yes.

23 A. As I heard it this morning, what they're
24 going to provide you is a -- the percentage of
25 traffic in that particular service area that is

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1 mobile -- terminated mobile versus fixed. From my
 2 perspective, the more interesting question is how
 3 -- what percentage of this traffic originates on a
 4 transportable basis. How many times does that box
 5 move for originating telephone calls? How many
 6 times do people take it off their wall and take it
 7 to their grandma as a transportable unit and then
 8 make telephone calls there? If you're outside of a
 9 particular cell site, there's -- the system's
 10 operations would have that information. It would
 11 be fairly difficult to get because it's not
 12 typically measured, but that is a more interesting
 13 question, to see how mobile, according to their
 14 words, the box is or, in my words, how
 15 transportable the service is really being used as.
 16 Q. And I believe you've said, too, as well as
 17 Mr. DeJordy, though, that it's very difficult to
 18 get that kind of information.
 19 A. Yes. In the ideal world you could get
 20 that information, but I would think it would be
 21 very difficult given the -- John Staurulakis would
 22 do traffic studies and do traffic analysis, and
 23 it's very difficult at times to get that at that
 24 level.
 25 Q. Thank you. All right. A couple more

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1 here. Does the fixed -- is the fixed service, is
 2 it offered over discrete block spectrum separate
 3 from the spectrum used for mobile services?
 4 A. My understanding is that the spectrum that
 5 Western Wireless is using is cellular spectrum, and
 6 that's actually quite significant because in the
 7 Code of Federal Regulations in Part 20.7 it talks
 8 about mobile services and it allows mobile services
 9 to be ancillary for PCS services, but not for
 10 cellular. So the fact that they're using cellular
 11 spectrum rather than PCS spectrum actually
 12 eliminates the ancillary arguments that are brought
 13 forth in this case.
 14 Q. Say that one more time.
 15 A. Yes. The spectrum that they're using is
 16 cellular spectrum, as I understand it. As a
 17 result, the cellular spectrum has particular
 18 regulatory treatment even at the federal level
 19 that's different than PCS service. So, I mean,
 20 it's even more confusing than perhaps just looking
 21 at wireline and wireless. But within the wireless
 22 world there's different regulatory treatment
 23 between PCS spectrum and cellular spectrum.
 24 Q. I understand that.
 25 A. The fact they're using cellular spectrum

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1 actually is a -- gives a -- has particular
 2 regulatory treatment that is not the same as PCS
 3 treatment.
 4 Q. But I don't quite understand. We're not
 5 talking about PCS here. They're using cellular
 6 spectrum.
 7 A. Correct. It was referred to -- I heard
 8 in, I believe, the opening discussion --
 9 Q. Yes.
 10 A. -- the term "ancillary."
 11 Q. Yes.
 12 A. The term "ancillary" is actually a term
 13 that's typically used for PCS only. It's not used
 14 for --
 15 Q. But ancillary is only one of the terms
 16 used. It could be incidental or --
 17 A. Or auxiliary.
 18 Q. -- auxiliary, as well.
 19 A. That is correct. In the '96 order they
 20 combined those three as a catch-all, but when you
 21 peel back and actually look at what the ancillary
 22 and -- ancillary service offerings are, there's
 23 different regulatory treatment based upon the
 24 spectrum that you're using.
 25 Q. So are the other two words, do they relate

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1 more to cellular?
 2 A. I -- I do not know.
 3 Q. All right.
 4 A. It's more of a general -- general set of
 5 terms, the other two.
 6 Q. Okay. Thank you. How about -- this might
 7 be hard for you to answer because it's always
 8 difficult, and -- well, I guess I won't ask this
 9 one. All right.
 10 How is the service marketed by the CMRS
 11 provider to potential customers?
 12 A. Well, the only information that I have is
 13 information that is publicly available and that I
 14 have seen brochures talking about wireless -- that
 15 Western Wireless's service as wireless residential
 16 service with a particular rate schedule. If my
 17 recollection serves me, it was 14.99 or something
 18 around in there for the unlimited calling in that
 19 calling area.
 20 Q. And you had read in the beginning of your
 21 testimony, I believe, something about a description
 22 of the service that you --
 23 A. Yes, I did.
 24 Q. Was that from their marketing materials,
 25 or was that just from your own understanding?